Calendar No. 218

103D CONGRESS
1ST SESSION

S. 1507

A BILL

To make technical amendments to the Higher Education Amendments of 1992 and the Higher Education Act of 1965, and for other purposes.

SEPTEMBER 30 (legislative day, SEPTEMBER 27), 1993

Read twice and ordered to be placed on the calendar

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To make technical amendments to the Higher Education Amendments of 1992 and the Higher Education Act of 1965, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 30 (legislative day, SEPTEMBER 27), 1993

Mr. PELL (for himself and Mr. JEFFORDS) introduced the following bill; which was read twice and ordered to be placed on the calendar

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A BILL

To make technical amendments to the Higher Education Amendments of 1992 and the Higher Education Act of 1965, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; REFERENCES.

(a) SHORT TITLE.—This Act may be cited as the ''Higher Education Technical Amendments Act of 1993''.

(b) REFERENCES.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of,

a section or other provision, the reference shall be considered to be made to a section or other provision of the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.).

SEC. 2. EFFECTIVE DATE FOR PELL GRANTS FOR INCARCERATED INDIVIDUALS.

Section 410 of the Higher Education Amendments of 1992 (20 U.S.C. 1070a note) is amended—

(1) by redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively; and

(2) by inserting after paragraph (1) the following new paragraph:

''(2) that the changes made in section 401(b)(8)(B), relating to Federal Pell Grants for incarcerated individuals, shall apply to the awarding of Federal Pell Grants for periods of enrollment on or after July 1, 1996;''.

SEC. 3. BASIC EDUCATIONAL OPPORTUNITY GRANTS.

The second sentence of section 401(a)(1) (20 U.S.C. 1070a(a)(1)) is amended by inserting '', except that this sentence shall not be construed to limit the authority of the Secretary to place an institution on a reimbursement system of payment'' before the period.

SEC. 4. EARLY INTERVENTION APPLICATION.

Section 404G (20 U.S.C. 1070a–27) is amended—

(1) in the first sentence, by striking ''an appropriation'' and inserting ''to be appropriated''; and

(2) by striking the second sentence.

SEC. 5. INTEREST RATES FOR NEW BORROWERS AFTER OCTOBER 1, 1992.

The matter preceding subparagraph (A) of section 427A(e)(1) (20 U.S.C. 1077a(e)(1)) is amended by inserting ''(other than a loan made, insured or guaranteed under section 428A)'' after ''this part''.

SEC. 6. FORBEARANCE CLARIFICATION.

Subparagraph (A) of section 428(c)(3) (20 U.S.C. 1078(c)(3)(A)) is amended by striking ''for the benefit of the student borrower serving in a medical or dental internship or residency program''.

SEC. 7. UNSUBSIDIZED LOAN INTEREST RATES.

Paragraph (4) of section 428H(e) (20 U.S.C. 1978–8(e)(4)) is amended by striking ''427A(e)'' and inserting ''427A''.

SEC. 8. PRESERVATION OF BORROWER CLAIMS AS DEFENSES.

Paragraph (1) of section 432(m) (20 U.S.C. 1082(m)(1)) is amended by adding at the end the following new subparagraph:

''(E) PRESERVATION OF BORROWER CLAIMS AS DEFENSES.—

''(i) The promissory note prescribed by the Secretary shall include the following provision:

''''ANY HOLDER OF THIS NOTE IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH I COULD ASSERT AGAINST THE SCHOOL IF (1) THIS LOAN IS MADE BY THE SCHOOL OR (2) THE PROCEEDS OF THIS LOAN ARE USED TO PAY TUITION AND CHARGES OF A SCHOOL THAT REFERS LOAN APPLICANTS TO THE LENDER, OR THAT IS AFFILIATED WITH THE LENDER BY COMMON CONTROL, CONTRACT OR BUSINESS ARRANGEMENT. MY RECOVERY UNDER THIS PROVISION SHALL NOT EXCEED THE AMOUNT I PAID ON THIS LOAN.'

''(ii) For purposes of this subparagraph—

''(I) an institution shall be considered to refer loan applicants to a particular lender if the institution urges, suggests, or otherwise recommends that loan applicants borrow from the lender and the lender is on notice of such recommendation by the institution at the time the loan is made, unless the institution does no more than identify the lender as an available source of student loans; and

''(II) a business arrangement exists if the lender and the institution agree to engage in cooperative activity with regard to the making of loans for students in attendance at the institution, except for activity specifically and expressly required by this Act or regulations issued by the Secretary.

''(iii) Notwithstanding the provisions of section 433.2 of title 16, Code of Federal Regulations, the provisions of clauses (i) and (ii) shall apply to all loans made, insured or guaranteed under this part.''.

SEC. 9. COHORT DEFAULT RATE.

(a) FINDINGS.—The Congress finds that—

(1) many institutions of higher education with high cohort default rates have avoided or sought to avoid loss of eligibility under the Federal Family Education Loan Program by alleging improper servicing or collection of the defaulted loans taken into account in determining their default rates;

(2) institutions of higher education bear a fair share of the blame for the increased level of defaults in such program;

(3) since a borrower remains responsible for paying on a loan even if there is improper loan serv-

icing or collection it would not be fair to forgive the institution of higher education for the default based on such errors, and exclusion of such loans would result in a misleading cohort default rate which is not reflective of the institution's performance;

(4) providing institutions of higher education with access to servicing or collection records relating to loans taken into account in determining the institution's cohort default rate, for the purpose of appealing the loss of eligibility, would frustrate the statutory purpose of reducing student loan defaults because collection and review of the records could not be completed within the statutory time frames for such review; and

(5) it is unnecessary to afford institutions of higher education such access to loan records because the statutory threshold percentages for loss of eligibility due to high cohort default rates are substantially above the preferred level of such rates for eligible institutions.

(b) SIMPLIFICATION OF DEFINITION OF COHORT DEFAULT RATE.—Subparagraph (B) of section 435(m)(1) (20 U.S.C. 1085(m)(1)(B)) is amended by striking all beginning with ‘‘, and,’’ through ‘‘calculation of the cohort default rate’’.

(c) EFFECTIVE DATE AND SAVINGS PROVISION.—

(1) EFFECTIVE DATE.—The amendment made by subsection (b) shall be effective on the date of enactment of this Act and shall apply to all determinations made by the Secretary under section 435(m)(1)(B) of the Higher Education Act of 1965 on or after that date, including determinations made on or after such date for fiscal years for which the Secretary made determinations under such section prior to such date.

(2) SAVINGS PROVISION.—The amendment made by subsection (b) shall not affect a determination of institutional eligibility made before the date of enactment of this Act.

SEC. 10. FEDERAL WORK-STUDY PROGRAMS.

Paragraph (5) of section 443(b) (20 U.S.C. 2753(b)(5) is amended to read as follows:

''(5) provide that the Federal share of the compensation of students employed in the work-study program in accordance with the agreement shall not exceed 75 percent for academic year 1993–1994 and succeeding academic years, except that the Federal share may exceed such amounts of such compensation if the Secretary determines, pursuant to regulations promulgated by the Secretary establishing ob-

jective criteria for such determinations, that a Federal share in excess of such amounts is required in furtherance of the purpose of this part;''.

SEC. 11. COST OF ATTENDANCE.

Section 472 (20 U.S.C. 1087ll) is amended—

(1) in paragraph (10), by striking ''and'' after the semicolon;

(2) in paragraph (11), by striking the period and inserting ''; and''; and

(3) by adding at the end the following new paragraph:

''(12) for a student who receives a loan under part B or D of this title (or on whose behalf the parent of such student receives a loan under section 428B or part D), an allowance for the actual cost of any loan fee, origination fee, or insurance premium charged to such student or such parent on such loan, or the average cost of any such fee or premium charged by the Secretary, eligible lender, or guaranty agency making or insuring such loan, as the case may be.''.

SEC. 12. CLARIFICATION REGARDING IRS FILINGS.

Section 479 (20 U.S.C. 1087ss) is amended—

(1) in subsection (b)(3)—

(A) in subparagraph (A), by inserting ''(including any prepared or electronic version of such form)'' before ''required''; and

(B) in subparagraph (B), by inserting ''(including any prepared or electronic version of such return)'' before ''required''; and

(2) in subsection (c)—

(A) by amending subparagraph (A) of paragraph (1) to read as follows:

''(A) the student's parents were not required to file an income tax return under section 6012(a)(1) of the Internal Revenue Code of 1986; and''; and

(B) by amending subparagraph (A) of paragraph (2) to read as follows:

''(A) the student (and the student's spouse, if any) was not required to file an income tax return under section 6012(a)(1) of the Internal Revenue Code of 1986; and''.

SEC. 13. DISCRETION OF STUDENT FINANCIAL AID OFFICER.

Section 479A (20 U.S.C. 1087tt) is amended by adding at the end the following new subsection:

''(c) ADJUSTMENTS FOR SPECIAL CIRCUMSTANCES.—

''(1) IN GENERAL.—A student financial aid administrator shall be considered to be making an adjustment for special circumstances in accordance with subsection (a) if—

''(A) in the case of a dependent student—

''(i) such student received a Federal Pell Grant as a dependent student in academic year 1992–1993 and the amount of such student's Federal Pell Grant for academic year 1993–1994 is at least $500 less than the amount of such student's Federal Pell Grant for academic year 1992–1993; and

''(ii) the decrease described in clause (i) is the direct result of a change in the determination of such student's need for assistance in accordance with this part that is attributable to the enactment of the Higher Education Amendments of 1992; and

''(B) in the case of a single independent student—

''(i) such student received a Federal Pell Grant as a single independent student in academic year 1992–1993 and qualified

as an independent student in accordance with section 480(d) for academic year 1993–1994, and the amount of such student's Federal Pell Grant for academic year 1993–1994 is at least $500 less than the amount of such student's Federal Pell Grant for academic year 1992–1993; and

''(ii) the decrease described in clause (i) is the direct result of a change in the determination of such student's need for assistance in accordance with this part that is attributable to the enactment of the Higher Education Amendments of 1992.

''(2) AMOUNT.—A financial aid administrator shall not make an adjustment for special circumstances pursuant to this subsection in an amount that exceeds one-half of the difference between the amount of a student's Federal Pell Grant for academic year 1992–1993 and the amount of such student's Federal Pell Grant for academic year 1993–1994.

''(3) ACADEMIC YEAR LIMITATION.—A financial aid administrator only shall make adjustments under this subsection for Federal Pell Grants awarded for

academic years 1993–1994, 1994–1995, and 1995–1996.

''(4) SPECIAL RULE.—Adjustments under this subsection shall only be made in fiscal year 1993 if an Act that contains an appropriation for fiscal year 1993 to carry out this subsection is enacted on or after the date of enactment of the Higher Education Technical Amendments of 1993.''.

SEC. 14. CORRESPONDENCE RULE WAIVER.

Subparagraph (B) of section 481(a)(3) (20 U.S.C. 1088(a)(3)(B)) is amended by inserting '', except that the Secretary, for good cause as determined by the Secretary, may deem a nonprofit institution that provides a 4-year or 2-year program of instruction for which such institution awards a bachelor's or associate's degree to be in compliance with the provisions of this subparagraph'' before the semicolon.

SEC. 15. WAIVER OF ABILITY TO BENEFIT RULE FOR CERTAIN SCHOOLS.

Subparagraph (D) of section 481(a)(3) (20 U.S.C. 1088(a)(3)(D)) is amended by inserting '', except that the Secretary, for good cause as determined by the Secretary, may deem an institution that has entered into a contract with a Federal, State or local government entity to serve students described in section 484(d) to be in compliance

with the provisions of this subparagraph'' before the period.

SEC. 16. DEFINITION OF ACADEMIC YEAR.

Paragraph (2) of section 481(d) (20 U.S.C. 1088(d)(2)) is amended by inserting '', except that the Secretary may waive the 30-week requirement described in this paragraph for good cause as determined by the Secretary'' before the period.

SEC. 17. TREATMENT OF UNCOMPENSATED FINANCIAL AID APPLICATION PREPARERS.

Subsection (f) of section 483 (20 U.S.C. 1090(f)) is amended by striking ''the preparer of such financial aid application'' and inserting ''any individual who receives compensation from an applicant or an applicant's family for the purpose of preparing such financial aid application, and nothing in this paragraph shall be construed to require an individual who does not receive such compensation to include such information on such application''.

SEC. 18. STUDENT ELIGIBILITY FOR FORMER TRUST TERRITORIES.

Subparagraph (B) of section 484(a)(4) (20 U.S.C. 1091(a)(4)(B)) is amended by inserting '', except that the provisions of this subparagraph shall not apply to students from the Republic of the Marshall Islands, the Federated

States of Micronesia, or the Republic of Palau'' after ''number''.

SEC. 19. DISCLOSURE OF COMPLETION OR GRADUATION RATE.

Subparagraph (A) of section 485(a)(3) (20 U.S.C. 1092(a)(3)(A) is amended by striking ''beginning on July 1, 1993, and each year'' and inserting ''within 270 days after the date on which the Secretary issues final regulations implementing the provisions of this paragraph and each July 1''.

SEC. 20. INDEPENDENCE OF ACCREDITING AGENCIES.

Subparagraph (A) of section 496(a)(3) (20 U.S.C. 1099b(a)(3)(A)) is amended by striking ''subparagraph (A) of paragraph (2)'' and inserting ''clause (i) of paragraph (2)(A)''.

SEC. 21. OPERATING PROCEDURES FOR ACCREDITING AGENCIES.

The matter preceding paragraph (1) of section 496(c) (20 U.S.C. 1099b(c)(1)) is amended by inserting ''determining an institution of higher education's eligibility to participate in programs under'' after ''purpose of''.

SEC. 22. FINANCIAL RESPONSIBILITY STANDARDS.

Subsection (c) of section 498 (20 U.S.C. 1099c(c)) is amended—

(1) in paragraph (3)—

(A) in the matter preceding subparagraph (A)—

(i) by striking ''may'' and inserting ''shall''; and

(ii) by inserting ''that provides a 2-year or 4-year program of instruction for which the institution awards an associate's or bachelor's degree'' before ''to be''; and

(B) by amending subparagraph (C) to read as follows:

''(C) such institution submits a report to the Secretary from an independent certified public accountant that certifies that the institution has sufficient resources to ensure against the precipitous closure of such institution, including the ability to meet all of such institution's financial obligations (including refunds of institutional charges and repayments to the Secretary for liabilities and debts incurred in programs administered by the Secretary); or''; and

(2) by adding at the end the following new paragraph:

''(6)(A) In carrying out the provisions of this subsection the Secretary shall establish financial re-

sponsibility standards that include requiring an institution of higher education to maintain an asset-to-liability ratio of 1:1.

''(B) For the purpose of computing an asset-to-liability ratio described in subparagraph (A) and paragraph (2), an institution—

''(i) may count as a current asset the equity (the difference between book cost and the mortgage owed) in facilities (land and buildings) owned and occupied by such institution and used to provide education and training services described in such institution's official publications;

''(ii) in the case of an application for recertification under this section, shall take into consideration the depreciation and current value of such facilities determined in accordance with a professional appraisal; and

''(iii) shall use the lesser value between the equity value and the current value of such facilities.''.

SEC. 23. NATIONAL BOARD FOR PROFESSIONAL TEACHING STANDARDS.

Section 551 (20 U.S.C. 1107) is amended—

(1) in paragraph (1) of subsection (b), by striking ''the Federal share of'';

(2) in subparagraph (B) of subsection (e)(1), by striking ''share of the cost of the activities of the Board is'' and inserting ''contributions described in subsection (f) are''; and

(3) by amending subsection (f) to read as follows:

''(f) MATCHING FUNDS REQUIREMENT.—

''(1) IN GENERAL.—The Secretary shall not provide financial assistance under this subpart to the Board unless the Board agrees to expend non-Federal contributions equal to $1 for every $1 of the Federal funds provided pursuant to such financial assistance.

''(2) NON-FEDERAL CONTRIBUTIONS.—The non-Federal contributions described in paragraph (1)—

''(A) may include all non-Federal funds raised by the Board on or after January 1, 1987; and

''(B) may be used for outreach, implementation, administration, operation, and other costs associated with the development and implementation of national teacher assessment

and certification procedures under this subpart.''.

SEC. 24. COOPERATIVE EDUCATION.

The matter preceding paragraph (1) of section 802(b) (20 U.S.C. 1133a(b)(1)) is amended by inserting ''the Secretary shall reserve such amount as is necessary to make payments in such fiscal year, in accordance with section 802 of the Higher Education Act of 1965 (as such Act was in effect on July 22, 1992) to each institution of higher education that was, on the date of enactment of the Higher Education Amendments of 1992, operating a cooperative education program under such section pursuant to a multiyear award. Of the remainder of the amount appropriated in such fiscal year'' after ''fiscal year''.

SEC. 25. PACIFIC REGIONAL EDUCATIONAL LABORATORY.

The matter preceding paragraph (1) of section 101A(b) of the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. 2311a(b)) is amended—

(1) by striking ''Center for the Advancement of Pacific Education, Honolulu, Hawaii, or its successor entity as the Pacific regional educational laboratory'' and inserting ''Pacific Regional Educational Laboratory, Honolulu, Hawaii''; and

(2) by inserting ''or provide direct services regarding'' after ''grants for''.

SEC. 26. DISTRIBUTION OF FUNDS TO POSTSECONDARY AND ADULT PROGRAMS.

Section 232 of the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. 2341a) is amended—

(1) in subsection (a)—

(A) in the first sentence, by inserting ''or consortia thereof'' before ''within''; and

(B) in the second sentence—

(i) by inserting ''or consortium'' before ''shall''; and

(ii) by inserting ''or consortium'' before ''in the preceding'';

(2) in subsection (b)—

(A) in paragraph (1), by inserting ''or consortia'' after ''institutions''; and

(B) in the matter preceding subparagraph (A) of paragraph (2), by inserting ''or consortia'' after ''institutions''; and

(3) in subsection (c)—

(A) in paragraph (1), by inserting ''or consortium'' after ''institution''; and

(B) in paragraph (2), by inserting ''or consortia'' after ''institutions''.

SEC. 27. GRADUATE PROGRAMS.

Notwithstanding any other provision of law, if an individual received multiyear fellowship assistance under part B, C, or D of title IX of the Higher Education Act of 1965 in fiscal year 1992, then the Secretary of Education shall apply the provisions of such parts (as such parts were in effect on July 22, 1992) for the remainder of the duration of such multiyear fellowship assistance.

SEC. 28. PATRICIA ROBERTS HARRIS FELLOWSHIP PROGRAM.

The Secretary of Education may use funds made available to carry out part B of title IX of the Higher Education Act of 1965 (20 U.S.C. 1134d et seq.) for fiscal year 1994 to carry out the provisions of section 27 for individuals eligible for multiyear fellowship assistance under part B (as such part was in effect on July 22, 1992) in fiscal year 1993.